United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

765

BRIEF OF APPELLANT AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,613

JOHN F. GRAHAM

Appellant,

v.

STEPHEN KLINGER, M.D.

Appellee.

Appeal from Judgment of the United States District Court for the District of Columbia

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BRIEF OF APPELLANT

STATEMENT OF THE ISSUE

Whether a Government psychiatrist, acting pursuant to a void court order, who detains an individual against his will and wrongfully alleges the individual is mentally diseased and extremely dangerous, is subject to suit for deprivation of civil rights.

REFERENCE TO RULING

Order granting defendant's motion to dismiss, August 29, 1969.

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[1] This case has not previously been before this Court.

STATEMENT OF THE CASE

Appellant was arrested and charged with mailing a threatening letter (18 U.S.C. 876)[2] on November 30, 1965, on a complaint of a Special Agent of the Federal Bureau of Investigation, which complaint alleged that appellant had mailed a letter threatening injury to a resident of California. Appellant was taken before Judge Harold H. Greene[3] of the District of Columbia Court of General Sessions, ostensibly sitting as a committing magistrate, and was ordered by the said judge to be committed to the District of Columbia General Hospital for mental observation, pursuant to 24 D.C. Code 301(a). On January 4, 1966, on the Government's motion, appellant was ordered by another judge of the D.C. Court of General Sessions, also pursuant to 24 D.C. Code 301(a), to be committed to St. Elizabeths Hospital as a person of unsound mind. When appellant was admitted to St. Elizabeths Hospital on January 4, 1966, the admitting psychiatrist entered in the clinical record:

> On examination he is excellently oriented and shows no impairment in his intellectual functioning.

On or about February 10, 1966, appellee declared appellant incompetent to stand trial. (Appellant was indicted, while still imprisoned in St. Elizabeths Hospital, on February 24, 1966.) On

[2] 18 U.S.C. 876: * * * Whoever knowingly * * * causes to be delivered * * * any communication * * * addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee, or another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

[3] Judge Greene is a German-Jewish refugee who came to the United States in 1943. Appellant is an Episcopalian whose first American ancestor, the Rev. John Graham, settled in Connecticut in 1718.

or about March 31, 1966, appellee informed the U.S. District Court that appellant was "suffering from a mental disease" and was "extremely dangerous," which information was presumably designed to insure appellant's continued detention in St. Elizabeths. On May 23, 1966, the U.S. District Court ordered that appellant be discharged from St. Elizabeths Hospital, and on October 19, 1966, the Government moved to dismiss the indictment.[4]

STATUTES INVOLVED

42 U.S.C. 1983 - Every person who, under color of any statute, ordinance, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

[4] Cf. John Stuart Mill. On Liberty, Boston: 1863, pp. 132-133n:

> There is something both contemptible and frightful in the sort of evidence on which, of late years, any person can be judicially declared unfit for the management of his affairs. * * * All the minute details of his daily life are pried into, and whatever is found which * * * bears an appearance unlike absolute commonplace, is laid before the jury as evidence of insanity. * * * These trials speak volumes as to the state of feeling and opinion among the vulgar with regard to human liberty. So far from setting any value on individuality - so far from respecting the rights of each individual to act, in things indifferent, as seems good to his own judgment and inclinations, judges and juries cannot even conceive that a person in a state of sanity can desire such freedom.

Imprisoning persons in St. Elizabeths Hospital without a showing of insanity is nothing new. In 1926 a Congressional investigation disclosed that, of the 4,400 persons then in St. Elizabeths, about 50% had never been adjudged insane. (Hearings before the Subcommittee of the Committee on the District of Columbia, House of Representative, 69th Congress, First Session, p. 1388. For a description of how hundreds of persons are now "railroaded" into St. Elizabeths, see David A. Jewell, "Fight Brews on Mental Health Commitment," Washington Post, May 26, 1969, p. A-1).

24 D.C. Code 301(a) - Whenever a person is arrested, indicted, charged by information, or is charged in the juvenile court of the District of Columbia, for or with an offense and, prior to the imposition of sentence or prior to the expiration of any period of probation, it shall appear to the court from the court's own observations or from prima facie evidence submitted to the court, that the accused is of unsound mind or is mentally incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. * * * [5]

STATEMENT OF POINT

Appellant is appealing the judgment of the court below on the following point:

[5] Cf. 18 U.S.C. 241:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of the United States, or because of his having so exercised the same; * * * They shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

While for a century, the theme song of mental hospital superintendents has been "overcrowding and understaffing," nothing would so effectively precipitate a decline in the nation's mental hospital population like a few psychiatrists going to prison for premeditated perjury. See Albert Q. Maisel, "The Tragedy of Sane People Who Get 'Put Away'", Reader's Digest, February, 1962, pp. 99-102). To Dr. Winfred Overholser, St. Elizabeths Hospital superintendent from 1937 to 1962, everyone, it seems, was insane until proven otherwise. In 1936 he gave the Annual Address before the New York Society for Clinical Psychiatry where he said that apparently "that hoary old dogma, the presumption of sanity, is hard to overcome." Boston University Law Review, April, 1936, at p. 329. In 1958 he declared Ezra Pound (see n. 12, infra) to be "incurably insane," yet, since then, Pound has continued to live a healthful, productive life. Either Dr. Overholser did not know the meaning of "insane" or he was guided by his own peculiar definition which is not generally recognized in law.

Where a person, having been committed to a mental hospital by a court without jurisdiction, is alleged by a Government psychiatrist to be suffering from a mental disease and to be extremely dangerous, the anticipated result of this allegation being the continued confinement of such person in a mental hospital, an action for the deprivation of civil rights states a claim upon which relief may be granted.

ARGUMENT

A Government Psychiatrist Who States That a Person Committed to a Mental Hospital Pursuant to a Void Court Order, Is Mentally Diseased and Extremely Dangerous, Where There Are No Clinical Records to Substantiate Such Statement, Is Liable to the Injured Party.

As heretofore noted, appellant was ordered committed to the D.C. General Hospital for mental observation by a judge of the D.C. Court of General Sessions, ostensibly sitting as a committing magistrate. To secure appellant's commitment to D.C. General Hospital the said judge invoked 24 D.C. Code 301(a), despite the fact that this statute authorizes only "the court" to order such commitments. Appellant does not question the said judge's statutory authority to sit as a committing magistrate or as a court, but appellant avers the said judge cannot act in both capacities simultaneously.

If the said judge was sitting as a committing magistrate he had no authority to invoke 24 D.C. Code 301(a), since it is axiomatic that a committing magistrate is not a court. In Mance v. Cameron, 260 F. Supp. 851, 852 (1966), the court below said:

> "The fact that a Judge of the Court of General Sessions at times sits as a committing magis-

> trate and at other times as a Judge of a Court for the trial of a misdemeanor and the transition may be very brief, does not enhance his powers when he acts as a committing magistrate. * * * 'A' committing magistrate, including a Judge of the Court of General Sessions when sitting as a committing magistrate, does not have the power to make a finding that a person charged with a felony is mentally incompetent to stand trial and thereby preclude action on this important question by [the U.S. District Court].

If the aforesaid judge was not sitting as a committing magistrate but was in fact sitting as a court, he was acting without jurisdiction of the subject matter. Appellant had been charged with an offense (a felony) against the laws of the United States, and for a municipal judge in a misdemeanor court to take jurisdiction of such an offense, under color of the District of Columbia law, was to deny appellant the equal rights, privileges and immunities guaranteed to him by the Constitution. In either case, whether the said judge was sitting as a committing magistrate or as a court, the said judge was without authority to invoke a local statute to secure the detention of a Federal prisoner. His decision thus was void, and all subsequent proceedings were rendered coram non judice.

It is an established principle that the law does not protect the officer who executes a void process. In Faloon v. O'Connell, 113 Me. 30, 92 A. 932, 933 (1915), the Supreme Judicial Court of Maine said:

> It is well settled, for reasons founded in public policy, that the law protects its officers in the performance of their duties, if there is no defect or want of jurisdiction apparent on the face of the writ or warrant under which they act. * * * But while the officer is not bound to look beyond his warrant, he is bound to look at it. The safety of the citizen and his protection against unwarrantable deprivation of personal liberty require that an

> officer should assume at least so much responsibility. * * * An officer is not protected by a warrant issued by a magistrate or an inferior court, unless it shows on its face that the magistrate or court had jurisdiction to issue it. Jurisdiction cannot be presumed. And the same rule applies, of course, when the want of jurisdiction appears affirmatively on the face of the process.

Although, on or about March 31, 1966, appellee informed the U.S. District Court that appellant was suffering from a mental disease and was extremely dangerous, the truth of the statement is highly debatable.[6] The clinical records of St. Elizabeths Hospital do not disclose symptoms which would indicate presence in appellant of mental disease. In an affidavit filed with the court below on July 29, 1969, appellee states that appellant was afflicted with "involutional psychotic reaction (compulsive posture)". To substantiate this diagnosis, appellee in his

[6] To a layman "dangerous" connotes suicidal or homicial tendencies, but in the patois of psychiatry "dangerous" is used to describe any nonconformist behavior. See Winfred Overholser, M.D., and Winifred Richmond, Ph.D., Handbook of Psychiatry, Philadelphia: 1947, pp. 37-38:

> The connotation of "dangerous" has to be stretched considerably in order to admit to mental hospitals many people who would suffer severely if left in the community. The aged and indigent, without relatives to care for them; the young praecox absorbed in his own inner experiences in a family who can netiehr understand nor tolerate him; the elated manic ecstatically flying about in taxis, giving parties, running up bills and having a gorgeous time - these individuals are actually dangerous only as their lack of judgment or their inability to care for themselves may create dangerous situations.

"Dangerous" is apparently also used by St. Elizabeths psychiatrists to describe any person who is not readily deceived. While at St. Elizabeths Hospital appellant was given psychological tests which showed that appellant's intellect was "very superior" (upper 2% of the population). Although psychological tests are not conclusive, there is the possibility that appellee was employing the word "dangerous" in respect to appellant in the same sense that President Jackson used the word in describing Mr. Justice Story as "the most dangerous man in America."

affidavit cites a definition from the Diagnostic and Statistical Manual, Mental Disorders, American Psychiatric Association, Washington, D.C.: 1952, p. 26. However, the definition cited by appellee refers to "schizophrenic reactions", which are not related etiologically, epidemiologically or nosologically to involutional psychotic reaction. [7]

According to the Psychiatric Dictionary, Hinsie and Campbell, 3rd ed., New York: 1960, p. 604: "It is not considered in keeping with the available facts to refer to psychosis as a disease, since the term disease is traditionally identified with pathology of tissues." Involutional psychosis is an affliction generally associated with women at menopause. [8] Almost any person who lives to 65 years of age has experienced some of the psychological symptoms, but most do not decompensate, nor are they considered mentally ill. (See Jack R. Ewalt, M.D., and Dana L. Farnsworth, M.D., Textbook of Psychiatry, New York: 1963, p. 203). It would appear, therefore, that even if appellant had been a woman suffering from the effects of menopause, he (she) should have been kept at home or treated for endocrine imbalance in a general hospital.

[7] While it is a general rule of law that a statement which amounts to an expression of opinion, even though erroneous, does not furnish ground for action, the physician may be held responsible for any deceit or misrepresentation. Tvedt v. Haugen, 70 N.D. 228, 294 N.W. 183 (1940).

[8] A foolish consistency being the hobgoblin of little minds, there has been an attempt in psychiatric circles to show that males as well as females are afflicted with involutional psychosis. Certain psychiatrists have assumed that, because a woman at menopause may suffer an endocrine imbalance, it is "only logical" that men at middle age should be similarly afflicted. These "psychiatricians" conveniently overlook the procreative differences between men and women and to support their hypothesis they have attempted to correlate ovarian insufficiency with diminishing testicular secretion - even though there are no reliable tests by which the sufficiency of testicular secretion can be measured. (See American Handbook of Psychiatry, Vol. III, New York: 1966, pp. 66-70).

Appellant, it would appear, was considered mentally diseased by appellee because appellant had mailed a letter threatening injury to a person who, under circumstances evidencing abduction, had married appellant's daughter. Though disclaiming he is a Freudian, appellee, like Dr. Freud, was brought up in an Austrian-Jewish ambiance; received his medical education, like Dr. Freud, at the University of Vienna, and was presumably inculcated with the Freudian hypothesis that all parental-filial devotion is incestuous.[9] It is not, however, recorded that appellee ever volunteered the opinion that President Truman was mentally diseased when the President, with considerably less provocation than appellant's to violate the interdiction of 18 U.S.C. 876, mailed a letter threatening injury to a stranger who had criticized his daughter.[10] In December, 1950, the President wrote:

[9] From time immemorial Jewish males, tending to regard women not as women but as defective men, have treated their wives and daughters with discourtesy and contempt, but instead of speaking out against this Jewish gaucherie, Freud, who was especially self-conscious about his Jewishness, concocted his theories of "penis envy" and "castration" complex" to explain a Jewish woman's unhappiness and resentment. From these theories (which were predicated on the assumption that a girl resented her mother because the mother had deprived the daughter of a penis) Freud moved inexorably to his belief in the "prevalence" of incest, despite the fact that instances of incest cited in the medical literature are extremely rare. See Hiram Johnson, M.D., "Psychoanalysis: Some Critical Comments," American Journal of Psychiatry, July, 1956, pp. 39-40, where Dr. Johnson states that the attempt to translate existential anxiety into psychsexual anxiety leads to tragic results and questions whether in our government-supported "dynamically-oriented" mental clinics, we are not developing the equivalent of a secular church staffed by a medical [illegible] priesthood dispensing atheism and hedonism.

[10] The inanity of Dr. Freud's theories is apparent when one tries to visualize the Truman women as suffering from penis envy and a castration comples, or to believe that the President was incestuous because of his feeling of protectiveness towards his daughter. In giving psychiatric treatment to Christians, Jewish psychiatrists are not only useless; they can do a lot of damage. See Fred Lawrence Guiles, Norma Jean: The Life of Marilyn Monroe, New York: 1969, pp. 317-318, which recounts how the act of one Jewish psychiatrist, Dr. Marianne Kris, drove Miss Monroe into hysteria in 1961, and Frank A. Capell, The Strange Death of Marilyn Monroe, Zarephath, N.J. 1964, p. 31, where it is shown that another Jewish psychiatrist, Dr. Ralph R. Greenson, had "treated" Miss Monroe (at a cost of $1,400) for 28 days between July 1, 1962, and her death on the night of August 4, 1962.

> Some day I hope to meet you. When that happens you'll need a new nose, a lot of beefsteak for black eyes, and perhaps a supporter below.

That appellee is Jewish is a material fact in appellant's case. At the time appellee alleged appellant was suffering from a mental disease appellee knew appellant had chosen, in a domestic controversy, to be loyal to his wife. But the relatively conplex Christian code of chivalry on which Anglo-Saxion law is founded is incomprehensible to most Jews, and if a Christian accepts the ministrations of a Jewish psychiatrist he has about as much chance of survival as a Jew would have in accepting the ministration of an "Aryan" doctor in a Nazi concentration camp.

It is a Jewish tenet (a) that all Christians are anti-Semitic (cf. Arthur Miller, Incident at Vichy, New York: 1965, p. 66: "I have never analyzed a gentile who did not have, somewhare hidden in his mind, a dislike if not a hatred for the Jews"), and (b) that anti-Semitism is a disease. Thus the Christian who submits himself to the care of a Jewish psychiatrist will find himself being treated for anti-Semitism, no matter how heavily larded the treatment may be with Freudian jargon. Writing of the American Jewish Committee, former California State Senator Jack B. Tenney stated in Zion's Fifth Column, Tujunga, Calif.: 1953, pp. 72 and 79:

> The AJC does not believe that anti-Semitism is solely a "Jewish problem." It maintains that it is a disease; a mental sickness. It finds nothing whatever in its own activities or in the activities of myriads of similar Jewish organizations that might account in any way for an unfriendly feeling toward the Jewish people.
>
> * * *
>
> [I]t would not be amiss if the AJC did a little mirror-gazing before brushing off anti-Semitism as a "mental sickness." There has rarely been a more glaring and impudent manifestation of arrogant conceit in the history of the world than the statement that anti-Semitism is a disease! In its essence it proclaims Jewish perfection,

> Jewish virtue and Jewish superiority, while relegating the unimpressed, the critical and the un-worshipping to the insane asylum! [11]

The matter appellant is bringing to the attention of the Court, however, is not one of fact but of law. The question is not whether appellant was (or is) mentally ill, mentally diseased, or nutty as a fruit cake. The question is (a) whether a person may be imprisoned pursuant to the D.C. Code where he has not committed an offense against the laws of the District of Columbia, and (b) whether an officer who executes a void court order is liable to the injured party for deprivation of the injured party's civil rights.

The court below granted appellee's motion to dismiss on the ground that appellant had failed to state a claim upon which relief might be granted. Appellant submits that the deprivation of civil rights is a valid claim upon which relief may be granted; that appellee was without authority to detain appellant for care and treatment, and if he did so pursuant to a void court order he is subject to suit by appellant.

CONCLUSION

The issues presented here are ones that will haunt the courts as long as the courts maintain the fiction that punishment is treat-

[11] For a psychoanalytic view of Jewish psychology see Franz G. Alexander, M.D., and Sheldon T. Selesnick, M.D., The History of Psychiatry, New York: 1966, p. 408, where Dr. Carl Gustav Jung, an early associate of Dr. Freud is quoted:

> **The Jews * * * aim at the gaps in the opponent's defenses, and because of this technique * * * the Jews have the best defenses where others are most vulnerable. * * * Because of their ancient culture they are capable quite consciously even in the most friendly and tolerant environment to indulge in their own vices * * * In my opinion it was an error of the hitherto existing medical psychology that it applied unwittingly the Jewish categories - which were not even valid for all Jews - to Germans and Christian Slavs. * * * At the same time my warning voice was suspected of anti-Semitism. This suspicion originated with Freud.**

ment.[12] To reward and punish the accused is the prerogative and obligation of the courts, but in recent years there has been an increasing tendency by the courts to shift the responsibility of reward and punishment to Government psychiatrists. (Cf. Alan M. Dershowitz, "Psychiatry in the Legal Process: A Knife That Cuts Both Ways," Trial, February-March, 1968, p. 29). Although Government psychiatrists speak in pseudo-medical terms, they are in reality required by the courts to make moral judgments, a requirement which, because of their deficient knowledge of law and ethics, they are not qualified to fulfill.[12] Without special qualifications to make moral judgments and answerable only to themselves, Government psychiatrists disguise their fundamental ignorance of human motivation by quoting (not always correctly) from the American Psychiatric Association's Diagnostic and

[12] The punitive aspects of psychiatric treatment were clearly recognized by Representative Emmanuel Celler, chairman of the House Judiciary Committee, when, in 1958, an effort was being made to secure the release of American poet Ezra Pound after thirteen years' imprisonment. Pound had been charged with "treason" because he had broadcast outspoken anti-Jewish sentiments over Italian radio facilities during World War II. Arrested in 1945, he was committed to St. Elizabeths in 1946. In 1958 Congressman Celler said:

> I don't care how long he has been in there, maybe we want to keep him in a little longer. * * * I can't conceive how they'd let him out scot free. I can't conceive that. Many of our men lost their lives as a result of his exhortations.

Two months after the death of Marilyn Monroe (see n. 10, supra) Attorney General Kennedy apparently tried to rid himself of the political opposition of former Major General Edwin A. Walker by having him declared insane. In October, 1962, Mr. Kennedy obtained the commitment of General Walker to the Medical Center for Federal Prisoners, Springfield, Mo., "for mental observation" on the basis of the opinion of a U.S. Bureau of Prisons psychiatrist, Dr. Charles E. Smith, that General Walker had manifested "bizarre" behavior. In early May, 1966, Dr. Smith joined the St. Elizabeths Hospital staff as a supervisory medical officer, and on May 20, 1966, Dr. Smith interviewed appellant. In the hospital clinical records Dr. Smith attributed to appellant "distinctly delusional thinking" in which appellant felt that appellant's daughter had made a bad marriage, that she was subject to undue influence by her mother-in-law (one Mrs. Iva W. Hartman of Barstow, Calif.) and possibly had been seduced by her husband-to-be. Dr. Smith is now associate professor of psychiatry, University of North Carolina.

Statistical Manual. But, when called upon to account for their "diagnoses", they duck under the motherly wing of the United States Attorney.[13]

It is apparently the premise of the Durham Rule and similar attempts to meddle with the law that "Psychiatry is a great and important science upon which the legislative and judicial branches rely." Pollard v. United States, 282 F. 2d 450 (C.A. 6) (1940). The medical literature, however, shows that psychiatry is a potpourri of conflicting theories. In "An Emprical Approach to Psychotherapy, the Agnostic View," American Journal of Psychiatry, July, 1963, at p. 53, Drs. Samuel B. Guze and George E. Murphy said:

> Since the causes of the common psychiatric disorders are unknown, and specific treatment is lacking, it is desirable to formulate an approach to psychotherapy that will permit treatment without commitment to any unproven theory. We endorse an empirical approach to the difficult problem of

[13] Having little or no knowledge of law or ethics, psychiatrists are nonetheless not loath to assume a posture of moral superiority. A psychiatric pastime is analyzing the world's immortals to show that they were mentally ill. (See Charles Binet-Sanglé, M.D., La Folie de Jésus (The Insanity of Jesus), Vol. I, Paris: 1968, p. 288, where Jesus is described as a psychotic degenerate whose agony at Gethsemane was "a vasomotoric attack accompanied by facial hematidrosis," and William Hirsch, M.D., Religion and Cvilization: The Conclusions of a Psychiatrist, New York: 1912, p. 103, where the clinical picture of Jesus is that of a paranoic whose delusions "formed themselves into a great systematized structure." For a comprehensive bibliography of works supporting the psychiatric view that Jesus was not divine but insane, see William E. Bundy, The Psychic Health of Jesus, New York: 1922.) Encouraging the inference that psychiatrists alone are mentally healthy, these analysts are similar to the pedagogues who, as Hegel noted more than a century ago, delight in making judgments of great men. In his Lectures on the Philosophy of History, London: 1861, p. 33, Hegel observed that the "psychological" view of great men (which, he said, serves the purpose of envy most effectively) contrives to make it appear that great men were motivated by some "morbid craving" and, because of this, were immoral men. Alexander of Macedon is alleged to have acted from a craving for fame, and the proof is that he did what resulted in fame. Since great men were motivated by such passions and were consequently immoral men, it is apparent that the pedagogue is a better man because he does not have such passions; the proof of which is that he has not done what brought others fame. Hegel concludes his observations with the comment that no man is a hero to his valet, not because the man is not a hero, but because the valet is a valet.

> treating patients in the absence of definite knowledge about etiology and pathogenesis. It requires no acceptance of unproven theory; it is flexible and tentative. [Emphasis added].

Writing in Harper's Magazine, February, 1967, at p. 45 on the topic "Where Psychiatry Fails," Donald M. Kaplan, Ph.D., associate editor of The Psychanalytic Review, said:

> The psychoanalytic profession consists of psychiatrists and a small number of nonmedical clinicians. In America the clinician is trained in the backyards of science and is deprived of intensive training in the humanities. Medical training, too, turns out physicians who are preponderantly pragmatic, scarcely versed in experimental method and the philosophy of science, and practically illiterate about the broad issues of Western cultural tradition. Today, the average physician is Neanderthal compared to his nineteenth-century forebears.[14]

Despite the claim that great strides have been made in the treatment of mental disorders during the past century, particularly in the District of Columbia, the claim is not substantiated by St. Elizabeths Hospital's annual reports. As of June 30, 1876, in the 25th year of Dr. Nichols' superintendency, 942 person had been under treatment during 1875-1876, of which 21.0% (198) had been admitted during the year; 8.6% (83) were discharged as recovered; 4.2% (40) were discharged as improved: 0.2% (2) were discharged

[14] Few twentieth-century treatises on psychiatry can equal in accuracy of observation and medical knowledge the textbooks of the nineteenth century (e.g., John Charles Bucknill, M.D., and Daniel H. Tuke, M.D., A Manual of Psychological Medicine, London: 1858, and Edward C. Spitzka, M.D., Insanity: Its Classification, Diagnosis and Treatment, New York: 1883). With the exception of those mental hospital superintendents who were living it up at the taxpayers' expense, nineteenth-century psychiatrists regarded insanity as a readily identifiable affliction; not an admixture of religio-sociological problems with a symptomatology of dreams.

as unimproved, and 5.5% (52) died. As of June 30, 1961, in the 25th year of Dr. Overholser's superintendency. 10.116 had been under treatment during 1960-1961, of which 20.2% (2,024) had been admitted during the year; 6.6% (664) were discharged as recovered; 2.2% (223) were discharged as improved; 0.7% (68) were discharged as unimproved, and 4.8% (484) died. It is an irony that those District of Columbia residents confined in St. Elizabeths (as of June 30, 1968) numbered 590.8 per 100,000 population, compared with the national rate of confinement in mental hospitals of 202.8 per 100,000 and Utah's low rate of 52.7. [15]

In the early nineteenth century psychiatrists were notably successful in curing mental disorders. (See Ruth B. Caplan, Psychiatry and the Community in Nineteenth-Century America, New York: 1969). Psychiatrist of that period recognized the fact that mental disorders were caused by moral detioration (cf. the word "de-moralize") and they employed "moral treatment" to obtain their consistently high rates of recovery. But moral treatment required a close relationship of confidence and companionship between physician and patients; that is to say, engaging in social activities with the patients and not merely seeing them on the wards. This was possible when mental hospital superintendents limited themselves to 200 patients. In the mid-nineteenth century, however, politicians, jurists, lawyers, and physicians discovered the boodle to be garnered from mental hospitals, and

[15] In fiscal 1876 the annual expenditures of St. Elizabeths totaled $167,777; in fiscal 1961 the total was $20,847,808. Based on a patient population of 744, the cost of maintaining a patient for a year in 1875-1876 was $225.51; in 1960-1961, based on a patient population of 7,992, the cost was $2,603.86. During Dr. Dale C. Cameron's superintendency (1962-1967) the cost per patient rose by 50% with no appreciable rise in the rate of recovery. The dismal record of St. Elizabeths and the nation's state mental hospitals in curing mental disorders is explanation enough as to why 90% of these hospitals' inmates must be traduced, shanghaied, railroaded and imprisoned before they will accpet the "benefits" of psychiatric treatment.

thereafter, with the introduction of a calculated policy of overcrowding and understaffing, moral treatment was abandoned.[16]

Nevertheless, the value of moral treatment is not to be disregarded. In "Some Influences of Catholic Education and Creed in Psychotic Reactions," Walter O. Jahrreiss, M.D., Diseases of the Nervous System, November, 1942, at p. 381, said:

> It seems that religious faith in itself has the power to endow the true believer with great strength and with the gift of an almost perfect integration. It enables the faithful to adjust himself to the world, and to adjust the world to his religious conception. Thus, he may be relatively safe from disintegration that leads to mental disturbance; and should this befall him, he may well be capable of keeping it under control.

The Christian ethic holds that all men, being made in God's

[16] Although early nineteenth-century psychiatrists such as Dr. Eli Todd (1769-1831), first superintendent of the Hartford (Conn.) Retreat, and Dr. Samuel Woodward (1787-1850), superintendent of the Massachusetts State Lunatic Hospital at Worcester, were experiencing considerable success in curing insanity, the number of patients in any one hospital did not exceed 250. In 1866, however, the inevitability of "overcrowding and understaffing" was assured when members of the Association of Medical Superintendents of Institutions for the Insane approved the proposition that separate institutions should not be provided for the curably and incurably insane. (See John S. Butler, M.D., The Curability of Insanity, New York: 1887, p. 3). Dr. Charles H. Nichols became superintendent of St. Elizabeths (then the Government Hospital for the Insane) in 1852 and while he was building himself a luxurious 19-room apartment in the hospital's main building, his patients were sleeping in blankets crawling with vermin. (Hearings before the Committee on Expenditures in the Interior Department, House of Representatives, 44th Congress, First Session, 1876). In 1926 Dr. William A. White, who had become the St. Elizabeths superintendent in 1903, was found to be receiving nearly two and one-half times the income in salary and allowances of the highest paid superintendent of any other Government-operated hospital (Army, Navy, Veterans' Bureau or Public Health Service). In addition to his 19-room (6-bedroom) apartment, he was furnished at Government expense with laundry and telephone service, a commissary (food, etc.), automobiles and four house-servants. (Hearings before the Committee on Expenditures in the Executive Departments, House of Representatives, 70th Congress, Second Session, December 19, 1928, pp. 6 and 22-24). It was also disclosed that in one four-year period (1922-1926) of Dr. White's superintendency thousands of items of clothing and bed and table linens, including 7,748 blankets, 19,505 pillow cases, 24,554 single troller General of the United States, pursuant to House Concurrent Resolution 26, adopted July 3, 1926, p. 121). To assure themselves of a continuing influx of patients the mental hospital superintendents maintained extremely cordial

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image, can be redeemed, but there is no evidence to support the belief that psychiatrists are morally equipped to return the miscreant to the paths of righteousness. Indeed, the opposite is true. Parading as a science, twentieth-century psychiatry assumes that men are merely mechanisms, motivated by savage impulses. In short, primarily due to the influence of Sigmund Freud, twentieth-century psychiatry is a religiosity of cynicism, degradation and despair which denies Man's idealism and spirituality, and it is hardly surprising that, of the 20-odd doctors originally associated with the psychoanalytic movement in Vienna, seven committed suicide: Marcus, 1913; Schrotter, 1913; Tausk, 1919; Kahane, 1923; Silberer, 1923; Stekel, 1940, and Federn, 1950. Even today the suicide rate among American psychiatrists (70 per 100,000) is twice that of all other physicians (33 per 100,000).

In the District of Columbia 32% of the burglaries are committed by those 15 years old and under, and appellant suggests that these (mostly deprived) youngsters are inherently no less virtuous than, for example, a circuit judge who profits from vending machines, real estate investments and other tax shelters. The

(Cont.)
relations with legislators, judges and lawyers. A happy triumvirate which proved profitable to all concerned consisted of Dr. White, Chief Justice Walter I. McCoy of the District of Columbia Supreme Court, and Frederick A. Fenning, a lawyer who managed to earn between $15,000 and $20,000 a year from guardianship of those committed (often illegally) to St. Elizabeths. (Hearings before the Subcommittee of the Committee on the District of Columbia, supra, pp. 55, 73-87, 132, 361-363). Today among the most profitable sources of graft for hospital personnel are the kick-backs received from drug suppliers. (Testimony of Jacob W. Miller. November 10, 1969. Hearings before the Committee on Ways and Means, H.R., 91st Congress. First Session. According to an article by William M O'Brien, M.D., "Drug Testing: Is Time Running Out?", Bulletin of the Atomic Scientists, January, 1969, p. 8, surveys at two hospitals (Johns Hopkins and Yale) show that from 0.4% to 1.55% of all patients admitted die of drug reaction; that both physicians and drug companies attempt to conceal evidence of drug toxicity, but even if only one-tenth of one percent of all hospital admissions in the United States died of drug reaction the number of annual deaths would approach 29,000. (This is three times the number of U.S. servicemen killed by enemy action in Vietnam during 1969).

first rule of life is to survive, and if an adolescent burglar displays less sophistication than a circuit judge in his struggle for survival, it does not follow that the young burglar is less virtuous, or, because he has broken the law, that he is mentally ill. [17]

Although absolute virtue is unattainable, it nevertheless remains a goal towards which every person, if he would find contentment, must strive. No less unattainable is absolute justice, and for that reason society created the law. While leaving much to be desired, the law defines patterns of behavior by which public officials as well as private citizens are expected to abide. It is true the law produces unequal justice, but seldom does it produce the horrendous injustice perpetrated by those who, however well-meaning, are not restrained by the law.

17 Although the proclaimed objectives are different, the results of psychoanalysis and brainswashing are identical. In both processes the subject is compelled to expose to another person the most sordid details of his life; thus leaving himself psychologically and spiritually naked, divested of self-respect, and completely submissive to the will of the operator (called in psychiatry "transference"). The efficacy of this technique employed for criminal purposes (the "witchcraft" of the Middle Ages) was exemplified by one Charles Manson who was reported in December, 1969, to have instigated several murders in California. According to newspaper accounts, Manson enslaved various girls by persuading them to engage publicly in group sexual perversions with the argument that this was the way to rid themselves of guilt. As the girls were "released" from their inhibitions they were stripped of all moral restraint to the point that no human life was worth preserving. For a short summary of the brainwashing process as it is practiced by the Russian state police see Report of the Committee on Government Operations, Permanent Subcommittee on Investigations, U.S. Senate, 84th Congress, Second Session, Report 2832, filed July 27, 1956. A variant of brainwashing is described in "Etiology of Antisocial Behavior in Delinquents and Psychopaths," Journal of the American Medical Association, March 6, 1954. The article reports the results of a ten-year study on juvenile delinquency in "good" families. According to the article the major cause of, and the specific stimulus for, stealing, fire-setting, sexual destructiveness, vandalism and recurrent criminal behavior is the unwitting sanction or indirect encouragement of the parents who achieve a vicarious gratification from the children's criminal acts. For an example of brainwashing turned into big business, see "Scientology," Life, November 15, 1968, pp. 99-114.

The responsibility of administering the law was placed by society on the courts but, in the District of Columbia, some jurists have envisioned it their duty to administer justice. This has resulted in such legal monstrosities as the Durham Rule which, no matter how great the idealism which may have inspired it, has merely transferred the power of reward and punishment from jurists to psychiatrists. Society - and a theologian might interpret this as irrefutable evidence of the existence of God - demands that virtue be rewarded and vice punished and, in appellant's opinion, judges, for all their fallibility, are infinitely more qualified by intellect and education to exercise the power of reward and punishment, according to law, than psychiatrists.

For the reason that appellee, in detaining appellant in St. Elizabeths Hospital, executed a void process; that appellee wrongfully and maliciously diagnosed appellant as being mentally diseased and extremely dangerous, and that appellee was not suffi-

18 An "Appreciation" by the then Under Secretary of the Interior, Abe Fortas, of the psychiatric precept that "Freedom from moralitics means freedom to think and behave sensibly" (see appellant's Complaint, pgh. 2, Appendix, p. 2)was published in Psychiatry, February, 1946, p. 2. Two decades later "freedom from moralities" was embraced by the so-called Hippies. In his article, "Hippie-Yippie Yikes!", Psychiatric Opinion, October, 1969, pp. 8 and 11, Richard R. Parlour, M.D., said:

> We have been learning from our educators and mental health professionals that traditional standards and disciplines are only "relatively" true, mostly irrelevant and almost always hypocritical: they cause mental illness, hard feelings, communication gaps and alientation, while permissiveness is supposed to bring reconciliation, joy and health. The Hippies merely took another step in disregarding rules and discipline, abandoned themselves of the pursuit of pleasure without work, and found themselves ragged, disease-ridden and utterly lost.
>
> * * *
>
> It is time for earnest searching for Truth, not paranoid scapegoating. The old questions still need to be asked and answered: What is the nzture of man? What is meaningful in life? The dark side of man's nature cannot be explained away by humanistic theories of mental illness.

ciently knowledgeable in law or ethics to determine appellant's competency to stand trial, appellant prays that the Order of the court below granting defendant's Motion to Dismiss for failure to state a claim upon which relief may be granted, or, in the alternative, granting defendant's Motion for Summary Judgment on the ground that there is no genuine issue of material fact, be reversed, and the cause remanded for the entry of judgment for the plaintiff.

Respectfully submitted,

JOHN F. GRAHAM, pro se
2022 Columbia Road, N.W.
Washington, D.C. 20009

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN F. GRAHAM
2022 Columbia Road, N.W.
Washington, D.C.

Plaintiff,

v.

Civil Action No. 1382-69

STEPHEN KLINGER, M.D.
West Side Service
St. Elizabeths Hospital
Washington, D.C.

Defendant

RELEVANT DOCKET ENTRIES

1969

May 23	Summons and complaint issued; served 5/27/69.
July 29	Motion of defendant to dismiss or in the alternative for summary judgment; affidavit; statement; points and authorities.
August 4	Memorandum of plaintiff ib opposition to motion to dismiss or in the alternative for summary judgment.
August 29	Order dismissing action.
September 26	Notice of appeal by plaintiff from order of 8/29/69.
November 4	Record on appeal delivered to U.S. Court of Appeals.

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COMPLAINT FOR DEPRIVATION OF CIVIL RIGHTS

1. Plaintiff is a citizen of the United States of America and a resident of the District of Columbia. Defendant, a psychiatrist, is Clinical Director, West Side Service, St. Elizabeths Hospital, Washington, D.C. Damages claimed by plaintiff exceed Ten Thousand Dollars ($10,000.00), exclusive of interest and costs.

2. In October, 1945, under the auspices of the William Alanson White Psychiatric Foundation, the trustees of which included one Abe Fortas, then Under Secretary of State, and one Lauchlin Currie, named by the FBI as a Soviet spy-ring informant, one George Brock Chisholm, M.D., an honorary fellow of the American Psychiatric Association, delivered two lectures, during the course of which the said Dr. Chishom stated:

a. Morality, the concept of right and wrong, is the poison of "the fruit of the tree of the knowledge of good and evil";

b. Most psychiatrists have escaped from the evil chains of right and wrong;

c. Poisonous certainties are fed to the people by parents, Sunday and day school teachers, politicians, priests and newspapers;

d. These certainties are used to impose local and familial and national loyalties on children, the result of which is fructration, inferiority and neurosis;

e. Belief in these certainties is a disease which must be controlled in the same way as tuberculosis, typhoid, diphtheria, smallpox and tumors are controlled.

3. In 1954 the aforesaid Abe Fortas, then an attorney in private practice, represented one Monte Durham, accused of housebreaking, and,

[1] This is incorrect. Mr. Fortas was Under Secretary of the Interior.

as attorney for Durham, the said Abe Fortas devised a method by which an accused could be imprisoned indefinitely in a mental institution on the testimony of a Government psychiatrist that the accused was suffering from a mental disease or defect, with no substantive proof that the accused was insane or had committed any crime.

4. With full knowledge that an accused might be imprisoned indefinitely in a mental institution if, prior to trial, he was declared to be suffering from a mental disorder, one David L. Bazelon, a judge of the United States Court of Appeals for the District of Columbia and a partner of the said Abe Fortas in various business ventures, promulgated the so-called Durham Rule, stating in part:

> The rule we now hold * * * is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect. We use "disease" in the sense of a condition which is considered capable of improving or deteriorating. Durham v. United States, 214 F 2nd, 862, 874. 'Emphasis added'.

5. In the so-called Durham Rule the said Judge Bazelon, wittingly or unwittingly neglected to define mental disease"; said neglect giving license to any psychiatrist to declare a person with whose moral convictions the psychiatrist disagrees a "suffering from a mental disease".

6. On November 30, 1965, plaintiff in the instant action was arrested by special agents of the FBI, pursuant to 18 U.S.C. 876 (mailing threatening communications) and on January 4, 1966, plaintiff was ordered committed to St. Elizabeths Hospital, pursuant to 24 D.C. Code 301(a), by one Catherine B. Kelly, a judge of the District of Columbia Court of General Sessions, a misdemeanor court.

7. On February 10, 1966, plaintiff was examined by defendant and defendant declared plaintiff to be incompetent to stand trial, defendant stating as his conclusion:

> The diagnosis given by the individual Medical Staff members varied between (A) involutional Psychotic Reaction in a compulsive personality and (B) a personality trait disturbance, namely, Compulsive Personality; the first was finally agreed on. As far as competency is concerned, there was also different opinions, but it was felt by the majority that Mr. Graham, who is aware and understands his charges, would be unable when put on the stand to assist his counsel in his proper defense. For this reason, patient is considered as incompetent.

8. On March 17, 1966, plaintiff was re-examined by defendant and found competent to stand trial and, on or about March 31, 1966, defendant informed the trial court that plaintiff was "suffering from a mental disease" and was "extremely dangerous", a conclusion completely unwarranted by the information pertaining to plaintiff in the clinical records of St. Elizabeths Hospital. (Plaintiff was arraigned on May 23, 1966, and was released on his own recognizance; on October 19, 1966, the indictment was dismissed on motion of the Government).

9. It is not considered in keeping with the available facts to refer to a psychosis as a disease, since the term <u>disease</u> is traditionally identified with the pathology of tissues (Hinsie and Campbell, <u>Psychiatric Dictionary</u>, 3rd ed. p. 602), even though, as historians know, "disease" has been used throughout the centuries to describe moral convictions with which the accusers do not agree. (Cf. Letter dated August 21, 1424, from Jean Graverent, Inquisitor of France, to Jean LeMaistre, his vicar in Rouen: "the disease of heresy [<u>moribus haeresis</u>] which spreads like cancer, and invisibly devours the gullible", and the public sentencing of Joan of Arc on May 30, 1431: "the pestilential poison of heresy [<u>haeresis pestiferum virus</u>]".)

10. It being well-documented in Jewish and Hebrew literature that non-Jews are to Jews an anathema and an abomination, plaintiff alleges that:

> a. In defendant's opinion all adherents to a belief in the divinity of Jesus Christ and the sanctity of the Virgin Mary are suffering from a mental disease;

b. Defendant's declaration that plaintiff was suffering from a mental disease was a result of defendant's introjected distorted image of plaintiff rather than of an objective review of the clinical records;

c. Defendant's declaration that plaintiff was suffering from a mental disease was made in order to secure plaintiff's continued confinement in St. Elizabeths Hospital in conformity with the requirements of the Durham Rule and without regard to plaintiff's actual mental condition.

d. Defendant's declaration that plaintiff was suffering from a mental disease was pejorative and not diagnostic.

11. Plaintiff further alleges that defendant, in declaring plaintiff incompetent to stand trial, entered into a conspiracy with one David G. Bress, then United States Attorney for the District of Columbia and a close friend and ally of the aforesaid Abe Fortas, to deny plaintiff the rights, privileges and immunities guaranteed to plaintiff by the United States Constitution, which conspiracy is punishable pursuant to 18 U.S.C. 241.

12. By reason of defendant's negligent, malicious, wanton, wrongful and unlawful acts, plaintiff was deprived under color of law and the statutes of the District of Columbia, of the rights, privileges and immunities secured to plaintiff by the United States Constitution and the laws of the United States, and was caused damage to his reputation and well-being in the amount of Five Hundred Thousand Dollars ($500,000.00).

13. Therefore plaintiff, pursuant to 42 U.S.C. 1983, demands judgment and damages, compensatory and exemplary, in the amount of Five Hundred Thousand Dollars ($500,000.00), plus costs.

JOHN F. GRAHAM, pro se
Plaintiff

JURY DEMAND

Plaintiff demands trial by jury on all issues.

NOTICE OF APPEAL

Notice is hereby given this 26th day of September, 1969, that Plaintiff hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court on the 29th dav of August, 1969, in favor of Defendant against said Plaintiff.

JOHN F. GRAHAM, pro se